

AMENDED IN ASSEMBLY APRIL 19, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2256

Introduced by Committee on Business and Professions (Negrete McLeod (Chair), Shirley Horton (Vice Chair), Bass, Frommer, Koretz, Maze, Nation, Tran, Vargas, and Yee)

February 22, 2006

An act to amend ~~Section 3077 of, to repeal Sections 3161 and 3162 Sections 3077, 3166, and 5615 of, to add Sections 3111, 5678, 5678.1, 5678.2, 5678.3, and 5678.4 to, to repeal Sections 3161, 3162, 5678.5, and 5679.5 of, and to repeal and add Section 3160 of, the Business and Professions Code,—and to amend Section 13401 of the Corporations Code,—relating to optometric corporations and to add Section 15770.5 to the Government Code, relating to professions and vocations.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2256, as amended, Committee on Business and Professions. ~~Optometric corporations: registration and reporting. Professions and vocations.~~

(1) Existing law, the Optometry Practice Act, provides for the licensure and regulation of optometrists by the State Board of Optometry *and makes a violation of the act a crime*. Under the act, an optometric corporation is required to obtain a certificate of registration from the board and file specified reports with it.

This bill would delete the provisions requiring an optometric corporation to obtain this certificate from the board and file these reports with it.

Existing law gives the board the same powers of suspension, revocation, and discipline against an optometric corporation as it has against individual licensees.

This bill would delete that provision, and would also delete a provision requiring the board to comply with the adjudication proceedings set forth in the administrative procedures act. The bill would make it unprofessional conduct and a misdemeanor for a person licensed under the act to violate the Moscone-Knox Professional Corporation Act.

(2) Existing law provides for the licensure and regulation of landscape architects by the California Architects Board, and defines a person who practices landscape architecture as a person who performs specified professional services.

This bill would also include in that definition a person who offers to perform those services.

Existing law requires an insurer that provides professional liability insurance to a landscape architect to report certain information to the board within a specified time after a settlement or arbitration award in specified claims or actions. Existing law also requires a landscape architect or his or her counsel to report to the board after a settlement or arbitration award of certain claims or actions, and makes a failure to do so a misdemeanor.

This bill would require an insurer or a governmental agency that self insures a landscape architect to report specified information to the board within 30 days of payment of a civil action judgment, settlement, or arbitration award, and would specify the information required to be reported by a landscape architect or his or her counsel. The bill would also authorize the board to adopt regulations relating to these reporting requirements.

(3) Existing law establishes the State Public Works Board, which includes the Director of Finance, the Director of Transportation, and the Director of General Services.

This bill would authorize the Director of Transportation and the Director of General Services to appoint a representative to act in their place on the board.

(4) Because the bill would create new crimes and expand existing crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3077 of the Business and Professions
- 2 Code is amended to read:
- 3 3077. As used in this section “office” means any office or
- 4 other place for the practice of optometry.
- 5 (a) No person, singly or in combination with others, may have
- 6 an office unless he or she is registered to practice optometry
- 7 under this chapter.
- 8 (b) An optometrist, or two or more optometrists jointly, may
- 9 have one office without obtaining a further license from the
- 10 board.
- 11 (c) On and after October 1, 1959, no optometrist, and no two
- 12 or more optometrists jointly, may have more than one office
- 13 unless he, or she, or they comply with the provisions of this
- 14 chapter as to an additional office. The additional office, for the
- 15 purposes of this chapter, constitutes a branch office.
- 16 (d) Any optometrist who has, or any two or more optometrists,
- 17 jointly, who have, a branch office prior to January 1, 1957, and
- 18 who desire to continue the branch office on or after that date
- 19 shall notify the board in writing of that desire in a manner
- 20 prescribed by the board.
- 21 (e) On and after January 1, 1957, any optometrist, or any two
- 22 or more optometrists, jointly, who desire to open a branch office
- 23 shall notify the board in writing in a manner prescribed by the
- 24 board.
- 25 (f) On and after January 1, 1957, no branch office may be
- 26 opened or operated without a branch office license. Branch office
- 27 licenses shall be valid for the calendar year in or for which they
- 28 are issued and shall be renewable on January 1st of each year
- 29 thereafter. Branch office licenses shall be issued or renewed only
- 30 upon the payment of the fee therefor prescribed by this chapter.

1 On or after October 1, 1959, no more than one branch office
2 license shall be issued to any optometrist or to any two or more
3 optometrists, jointly.

4 (g) Any failure to comply with the provisions of this chapter
5 relating to branch offices or branch office licenses as to any
6 branch office shall work the suspension of the certificate of
7 registration of each optometrist who, individually or with others,
8 has a branch office. A certificate of registration so suspended
9 shall not be restored except upon compliance with those
10 provisions and the payment of the fee prescribed by this chapter
11 for restoration of a certificate of registration after suspension for
12 failure to comply with the provisions of this chapter relating to
13 branch offices.

14 (h) The holder or holders of a branch office license shall pay
15 the annual renewal fee therefor in the amount required by this
16 chapter between the first day of January and the first day of
17 February of each year. The failure to pay the fee in advance on or
18 before February 1st of each year during the time it is in force
19 shall ipso facto work the suspension of the branch office license.
20 The license shall not be restored except upon written application
21 and the payment of the penalty prescribed by this chapter, and, in
22 addition, all delinquent branch office fees.

23 (i) Nothing in this chapter shall limit or authorize the board to
24 limit the number of branch offices that are in operation on
25 October 1, 1959 and that conform to this chapter, nor prevent an
26 optometrist from acquiring any branch office or offices of his or
27 her parent. The sale after October 1, 1959 of any branch office
28 shall terminate the privilege of operating the branch office, and
29 no new branch office license shall be issued in place of the
30 license issued for the branch office, unless the branch office is
31 the only one operated by the optometrist or two or more
32 optometrists jointly.

33 Nothing in this chapter shall prevent an optometrist from
34 owning, maintaining, or operating more than one branch office if
35 he or she is in personal attendance at each of his offices fifty
36 percent (50%) of the time during which the office is open for the
37 practice of optometry.

38 (j) The board shall have the power to adopt, amend, and repeal
39 rules and regulations to carry out the provisions of this section.

(k) Notwithstanding any other provision of this section, neither an optometrist nor an individual practice association shall be deemed to have an additional office solely by reason of the optometrist's participation in an individual practice association or the individual practice association's creation or operation. As used in this subdivision, the term "individual practice association" means an entity that meets all of the following requirements:

(1) Complies with the definition of an optometric corporation in Section 3160.

(2) Operates primarily for the purpose of securing contracts with health care service plans or other third-party payers that make available eye/vision services to enrollees or subscribers through a panel of optometrists.

(3) Contracts with optometrists to serve on the panel of optometrists, but does not obtain an ownership interest in, or otherwise exercise control over, the respective optometric practices of those optometrists on the panel.

Nothing in this subdivision shall be construed to exempt an optometrist who is a member of an individual practice association and who practices optometry in more than one physical location, from the requirement of obtaining a branch office license for each of those locations, as required by this section. However, an optometrist shall not be required to obtain a branch office license solely as a result of his or her participation in an individual practice association in which the members of the individual practice association practice optometry in a number of different locations, and each optometrist is listed as a member of that individual practice association.

SEC. 2. Section 3111 is added to the Business and Professions Code, to read:

3111. It is unprofessional conduct and a violation of this chapter for a person licensed under this chapter to violate, attempt to violate, assist in the violation of, or conspire to violate the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, or any regulation adopted pursuant to those provisions.

1 ~~SEC. 2.~~

2 ~~SEC. 3.~~ Section 3160 of the Business and Professions Code is
3 repealed.

4 ~~SEC. 3.~~

5 ~~SEC. 4.~~ Section 3160 is added to the Business and
6 Professions Code, to read:

7 3160. An optometric corporation is a corporation that is
8 authorized to render professional services, as described in
9 Sections 13401 and 13401.5 of the Corporations Code, if that
10 corporation and its shareholders, officers, directors, and
11 employees rendering professional services who are physicians
12 and surgeons, psychologists, registered nurses, optometrists, or
13 podiatrists are in compliance with the Moscone-Knox
14 Professional Corporation Act as contained in Part 4
15 (commencing with Section 13400) of Division 3 of Title 1 of the
16 Corporations Code, the provisions of this article, and all other
17 statutes and regulations now or hereafter enacted or adopted
18 pertaining to the corporation and the conduct of its affairs. With
19 respect to an optometric corporation, the governmental agency
20 referred to in the Moscone-Knox Professional Corporation Act is
21 the State Board of Optometry.

22 ~~SEC. 4.~~

23 ~~SEC. 5.~~ Section 3161 of the Business and Professions Code is
24 repealed.

25 ~~SEC. 5.~~

26 ~~SEC. 6.~~ Section 3162 of the Business and Professions Code is
27 repealed.

28 ~~SEC. 7.~~ *Section 3166 of the Business and Professions Code is*
29 *amended to read:*

30 3166. An optometric corporation shall not do or fail to do ~~any~~
31 ~~an act the doing of which or the failure to do which would~~
32 ~~constitute unprofessional conduct under any statute, rule, or~~
33 ~~regulation now or hereafter in effect.~~ In conducting its practice it,
34 ~~an optometric corporation shall observe and be bound by such~~
35 ~~statutes, rules, and regulations to the same extent as a person~~
36 ~~holding a license under Section 3055. The board shall have the~~
37 ~~same powers of suspension, revocation, and discipline against an~~
38 ~~optometric corporation as are now or hereafter authorized by~~
39 ~~Section 3090, or by any other similar statute against individual~~
40 ~~licensees, provided however, that proceedings against an~~

~~optometric corporation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.~~

SEC. 8. *Section 5615 of the Business and Professions Code is amended to read:*

5615. As used in this chapter:

“Landscape architect” means a person who holds a license to practice landscape architecture in this state under the authority of this chapter.

A person who practices landscape architecture within the meaning and intent of this article is a person who *offers or* performs professional services, for the purpose of landscape preservation, development and enhancement, such as consultation, investigation, reconnaissance, research, planning, design, preparation of drawings, construction documents and specifications, and responsible construction observation. Landscape preservation, development and enhancement is the dominant purpose of services provided by landscape architects. Implementation of that purpose includes: (1) the preservation and aesthetic and functional enhancement of land uses and natural land features; (2) the location and construction of aesthetically pleasing and functional approaches and settings for structures and roadways; and, (3) design for trails and pedestrian walkway systems, plantings, landscape irrigation, landscape lighting, landscape grading and landscape drainage.

Landscape architects perform professional work in planning and design of land for human use and enjoyment. Based on analysis of environmental physical and social characteristics, and economic considerations, they produce overall plans and landscape project designs for integrated land use.

The practice of a landscape architect may, for the purpose of landscape preservation, development and enhancement, include: investigation, selection, and allocation of land and water resources for appropriate uses; feasibility studies; formulation of graphic and written criteria to govern the planning and design of land construction programs; preparation review, and analysis of master plans for land use and development; production of overall site plans, landscape grading and landscape drainage plans, irrigation plans, planting plans, and construction details;

1 specifications; cost estimates and reports for land development;
2 collaboration in the design of roads, bridges, and structures with
3 respect to the functional and aesthetic requirements of the areas
4 on which they are to be placed; negotiation and arrangement for
5 execution of land area projects; field observation and inspection
6 of land area construction, restoration, and maintenance.

7 This practice shall include the location, arrangement, and
8 design of those tangible objects and features as are incidental and
9 necessary to the purposes outlined herein. Nothing herein shall
10 preclude a duly licensed landscape architect from planning the
11 development of land areas and elements used thereon or from
12 performing any of the services described in this section in
13 connection with the settings, approaches, or environment for
14 buildings, structures, or facilities, in accordance with the
15 accepted public standards of health, safety, and welfare.

16 This chapter shall not empower a landscape architect, licensed
17 under this chapter, to practice, or offer to practice, architecture or
18 engineering in any of its various recognized branches.

19 *SEC. 9. Section 5678 is added to the Business and*
20 *Professions Code, to read:*

21 *5678. (a) A licensee shall report to the board in writing*
22 *within 30 days of the date the licensee has knowledge of any civil*
23 *action judgment, settlement, arbitration award, or administrative*
24 *action resulting in a judgment, settlement, or arbitration award*
25 *against the licensee in any action alleging fraud, deceit,*
26 *negligence, incompetence, or recklessness by the licensee in the*
27 *practice of landscape architecture if the amount or value of the*
28 *judgment, settlement, or arbitration award is five thousand*
29 *dollars (\$5,000) or greater.*

30 *(b) The report required by subdivision (a) shall be signed by*
31 *the licensee and shall set forth the facts that constitute the*
32 *reportable event. If the reportable event involves the action of an*
33 *administrative agency or court, the report shall set forth all of*
34 *the following:*

35 *(1) The title of the matter.*

36 *(2) The court or agency name.*

37 *(3) The docket number.*

38 *(4) The claim or file number.*

39 *(5) The date on which the reportable event occurred.*

1 (c) A licensee shall promptly respond to oral or written
2 inquiries from the board concerning the reportable events,
3 including inquiries made by the board in conjunction with license
4 renewal.

5 (d) Failure of a licensee to comply with this section shall be
6 grounds for disciplinary action.

7 (e) (1) Failure of a licensee or claimant or, if represented by
8 counsel, the licensee or claimant's counsel, to comply with this
9 section shall be a misdemeanor punishable by a fine of not less
10 than one hundred dollars (\$100) or more than one thousand
11 dollars (\$1,000).

12 (2) Knowing and intentional failure to comply with this
13 section, or conspiracy or collusion not to comply with this
14 section, or to impede any other person from complying with this
15 section shall be a misdemeanor punishable by a fine of not less
16 than ten thousand dollars (\$10,000) nor more than one hundred
17 thousand dollars (\$100,000).

18 SEC. 10. Section 5678.1 is added to the Business and
19 Professions Code, to read:

20 5678.1. (a) Within 30 days of payment of all or any portion
21 of a civil action judgment, settlement, or arbitration award
22 described in Section 5678 against a licensee of the board in
23 which the amount or value of the judgment, settlement, or
24 arbitration award is five thousand dollars (\$5,000) or greater,
25 any insurer providing professional liability insurance to that
26 licensee or landscape architectural entity shall report to the
27 board all of the following:

28 (1) The name of the licensee.

29 (2) The claim or file number.

30 (3) The amount or value of the judgment, settlement, or
31 arbitration award.

32 (4) The amount paid by the insurer.

33 (5) The identity of the payee.

34 (b) Within 30 days of payment of all or any portion of any civil
35 action judgment, settlement, or arbitration award described in
36 Section 5678 against a licensee of the board in which the amount
37 or value of the judgment, settlement, or arbitration award is five
38 thousand dollars (\$5,000) or greater, any state or local
39 governmental agency that self insures that licensee shall report
40 to the board all of the following:

1 (1) *The name of the licensee.*

2 (2) *The claim or file number.*

3 (3) *The amount or value of the judgment, settlement, or*
4 *arbitration award.*

5 (4) *The amount paid.*

6 (5) *The identity of the payee.*

7 SEC. 11. *Section 5678.2 is added to the Business and*
8 *Professions Code, to read:*

9 5678.2. *The requirements of Sections 5678 and 5678.1 shall*
10 *apply if a party to the civil action, settlement, arbitration award,*
11 *or administrative action is or was (a) a sole proprietorship,*
12 *partnership, firm, corporation, or state or local governmental*
13 *agency in which a licensee is or was an owner, partner, member,*
14 *officer, or employee and (b) a licensee in responsible control of*
15 *that portion of the project that was the subject of the civil*
16 *judgment, settlement, arbitration award, or administrative*
17 *action.*

18 SEC. 12. *Section 5678.3 is added to the Business and*
19 *Professions Code, to read:*

20 5678.3. *Notwithstanding any other provision of law, a*
21 *licensee shall not be considered to have violated a confidential*
22 *settlement agreement or other confidential agreement by*
23 *providing a report to the board as required by this article.*

24 SEC. 13. *Section 5678.4 is added to the Business and*
25 *Professions Code, to read:*

26 5678.4. *The board may adopt regulations to further define the*
27 *reporting requirements of Sections 5678 and 5678.1.*

28 SEC. 14. *Section 5678.5 of the Business and Professions*
29 *Code is repealed.*

30 ~~5678.5.—Every insurer providing professional liability~~
31 ~~insurance to a holder of a license, and every licenseholder, shall~~
32 ~~send a complete report to the board on any settlement or~~
33 ~~arbitration award in excess of five thousand dollars (\$5,000) of a~~
34 ~~claim or action for damages caused by the licenseholder's fraud,~~
35 ~~deceit, negligence, incompetency, or recklessness in practice.~~
36 ~~The report shall be sent within 30 days after the settlement~~
37 ~~agreement has been consented to by the insured or within 30 days~~
38 ~~after service of the arbitration award on the parties.~~

39 SEC. 15. *Section 5679.5 of the Business and Professions*
40 *Code is repealed.*

~~5679.5. Every settlement or arbitration award in excess of five thousand dollars (\$5,000) of a claim or action for damages caused by the licenseholder's fraud, deceit, negligence, incompetency, or recklessness in practice when the licenseholder does not possess professional liability insurance as to the claim shall, within 30 days after any settlement agreement has been consented to by the licenseholder or 30 days after service of the arbitration award on the parties, be reported to the board. A complete report shall be made by appropriate means by the licenseholder or the holder's counsel, with a copy of the communication to be sent to the claimant through the claimant's counsel if the claimant is so represented, or directly if the claimant is not. If, within 45 days of the conclusion of the settlement agreement or service of the arbitration award on the parties, counsel for the claimant, or if the claimant is not represented by counsel, the claimant, has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the licenseholder or claimant or, if represented by counsel, their counsel, to comply with this section shall be a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in compliance shall be a misdemeanor punishable by a fine of not less than ten thousand dollars (\$10,000) nor more than one hundred thousand dollars (\$100,000).~~

~~SEC. 6.~~

SEC. 16. Section 13401 of the Corporations Code is amended to read:

13401. As used in this part:

(a) "Professional services" means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.

(b) "Professional corporation" means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 that is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by

1 the governmental agency regulating the profession as herein
2 provided and that in its practice or business designates itself as a
3 professional or other corporation as may be required by statute.
4 However, any professional corporation or foreign professional
5 corporation rendering professional services by persons duly
6 licensed by the Medical Board of California or any examining
7 committee under the jurisdiction of the board, the Osteopathic
8 Medical Board of California, the Dental Board of California, the
9 California State Board of Pharmacy, the Veterinary Medical
10 Board, the California Architects Board, the Court Reporters
11 Board of California, the Board of Behavioral Sciences, the
12 Speech-Language Pathology and Audiology Board, the Board of
13 Registered Nursing, or the State Board of Optometry shall not be
14 required to obtain a certificate of registration in order to render
15 those professional services.

16 (c) "Foreign professional corporation" means a corporation
17 organized under the laws of a state of the United States other
18 than this state that is engaged in a profession of a type for which
19 there is authorization in the Business and Professions Code for
20 the performance of professional services by a foreign
21 professional corporation.

22 (d) "Licensed person" means any natural person who is duly
23 licensed under the provisions of the Business and Professions
24 Code, the Chiropractic Act, or the Osteopathic Act to render the
25 same professional services as are or will be rendered by the
26 professional corporation or foreign professional corporation of
27 which he or she is or intends to become, an officer, director,
28 shareholder, or employee.

29 (e) "Disqualified person" means a licensed person who for any
30 reason becomes legally disqualified (temporarily or permanently)
31 to render the professional services that the particular professional
32 corporation or foreign professional corporation of which he or
33 she is an officer, director, shareholder, or employee is or was
34 rendering.

35 *SEC. 17. Section 15770.5 is added to the Government Code,*
36 *to read:*

37 *15770.5. Notwithstanding any other provision of law, the*
38 *Director of Transportation and the Director of General Services*
39 *may appoint a deputy or assistant director in their respective*
40 *departments to act in their place on the board, irrespective of*

1 *whether the deputy or assistant director holds a position*
2 *specified in subdivision (g) of Section 4 of Article VII of the*
3 *California Constitution, and irrespective of whether there is to be*
4 *more than one person representing a director at a meeting of the*
5 *board. While serving on the board, the representative shall have*
6 *all the powers of the director he or she is representing, including*
7 *the right to be counted in a quorum, to participate in the*
8 *proceedings of the board, and to vote on all matters. The director*
9 *shall be responsible for the representative's acts to the same*
10 *extent that the director is responsible for the deputy or assistant*
11 *director's acts when performing his or her official duties.*

12 *SEC. 18. No reimbursement is required by this act pursuant*
13 *to Section 6 of Article XIII B of the California Constitution*
14 *because the only costs that may be incurred by a local agency or*
15 *school district will be incurred because this act creates a new*
16 *crime or infraction, eliminates a crime or infraction, or changes*
17 *the penalty for a crime or infraction, within the meaning of*
18 *Section 17556 of the Government Code, or changes the definition*
19 *of a crime within the meaning of Section 6 of Article XIII B of the*
20 *California Constitution.*